

## AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-426, §15(1), (2), substituted “five” for “three”, and inserted “The Chairman shall have the authority, as delegated by the Secretary, to exercise all administrative functions necessary to operate the Board.”

Subsec. (b)(2). Pub. L. 98-426, §15(3), substituted “three” for “two” wherever appearing.

Subsec. (b)(5). Pub. L. 98-426, §15(4), added par. (5).

1978—Subsec. (b)(4). Pub. L. 95-251 substituted “administrative law judge” for “hearing examiner”.

1972—Subsec. (b). Pub. L. 92-576, §15(a), added subsec. (b). Former provisions of subsec. (b) for injunction proceedings to suspend or set aside a compensation order by a party in interest against a deputy commissioner in Federal district court for judicial district where injury occurred superseded by subsec. (c) of this section and former provisions of such subsec. (b) respecting service of process and stay of payments, except for the procedural requirement of an interlocutory injunction to the court and hearing on at least three days’ notice to the parties in interest and the deputy commissioner, incorporated in subsec. (c) of this section.

Subsecs. (c) to (e). Pub. L. 92-576, §15(a), (b), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

## EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

## EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92-576, set out as a note under section 902 of this title.

REVIEW OF DECISIONS MADE BY OR PENDING BEFORE  
BENEFITS REVIEW BOARD

Pub. L. 105-277, div. A, §101(f) [title I], Oct. 21, 1998, 105 Stat. 2681-337, 2681-345, provided in part: “That no funds made available by this Act [see Tables for classification] may be used by the Solicitor of Labor to participate in a review in any United States court of appeals of any decision made by the Benefits Review Board under section 21 of the Longshore and Harbor Workers’ Compensation Act (33 U.S.C. 921) where such participation is precluded by the decision of the United States Supreme Court in *Director, Office of Workers’ Compensation Programs v. Newport News Shipbuilding*, 115 S. Ct. 1278 (1995), notwithstanding any provisions to the contrary contained in Rule 15 of the Federal Rules of Appellate Procedure [28 U.S.C. App.]: *Provided further*, That no funds made available by this Act may be used by the Secretary of Labor to review a decision under the Longshore and Harbor Workers’ Compensation Act (33 U.S.C. 901 et seq.) that has been appealed and that has been pending before the Benefits Review Board for more than 12 months: *Provided further*, That any such decision pending a review by the Benefits Review Board for more than one year shall be considered affirmed by the Benefits Review Board on the one-year anniversary of the filing of the appeal, and shall be considered the final order of the Board for purposes of obtaining a review in the United States courts of appeals: *Provided further*, That these provisions shall not be applicable to the review or appeal of any decision issued under the Black Lung Benefits Act (30 U.S.C. 901 et seq.).”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 105-78, title I, Nov. 13, 1997, 111 Stat. 1475.

Pub. L. 104-208, div. A, title I, §101(e) [title I], Sept. 30, 1996, 110 Stat. 3009-233, 3009-241.

Pub. L. 104-134, title I, §101(d) [title I], Apr. 26, 1996, 110 Stat. 1321-211, 1321-218; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327.

## FEDERAL RULES OF CIVIL PROCEDURE

Application, see rule 81, Title 28, Appendix, Judiciary and Judicial Procedure.

## CROSS REFERENCES

Penalty for failure to pay award pending review, see section 914 of this title.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 914, 919, 921a, 939 of this title; title 5 section 8171; title 42 section 1653.

**§ 921a. Appearance of attorneys for Secretary, deputy commissioner, or Board**

Attorneys appointed by the Secretary shall represent the Secretary, the deputy commissioner, or the Board in any court proceedings under section 921 of this title or other provisions of this chapter except for proceedings in the Supreme Court of the United States.

(May 4, 1928, ch. 502, 45 Stat. 490; June 25, 1948, ch. 646, §1, 62 Stat. 909; Pub. L. 92-576, §16, Oct. 27, 1972, 86 Stat. 1262.)

## CODIFICATION

Section was not enacted as part of the Longshore and Harbor Workers’ Compensation Act which comprises this chapter.

## AMENDMENTS

1972—Pub. L. 92-576 substituted provisions for representation of the Secretary, the deputy commissioner, or the Board by attorneys appointed by the Secretary except for proceedings in the Supreme Court, for former provisions requiring the United States attorney in the judicial district in which the case is pending to appear as attorney or counsel on behalf of the Secretary of Labor or his deputy commissioner when either is a party to the case or interested, and to represent such Secretary or deputy in any court in which such case may be carried on appeal.

## CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted “United States attorney” for “district attorney of the United States”. See section 541 of Title 28, Judiciary and Judicial Procedure, and Historical and Revision note thereunder.

## EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92-576, set out as a note under section 902 of this title.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 941 of this title.

**§ 922. Modification of awards**

Upon his own initiative, or upon the application of any party in interest (including an employer or carrier which has been granted relief under section 908(f) of this title), on the ground of a change in conditions or because of a mistake in a determination of fact by the deputy commissioner, the deputy commissioner may, at any time prior to one year after the date of the last payment of compensation, whether or not a compensation order has been issued, or at any time prior to one year after the rejection of a claim, review a compensation case (including a case under which payments are made pursuant to section 944(i) of this title) in accordance with the procedure prescribed in respect of claims in section 919 of this title, and in accordance with such section issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation, or award

compensation. Such new order shall not affect any compensation previously paid, except that an award increasing the compensation rate may be made effective from the date of the injury, and if any part of the compensation due or to become due is unpaid, an award decreasing the compensation rate may be made effective from the date of the injury, and any payment made prior thereto in excess of such decreased rate shall be deducted from any unpaid compensation, in such manner and by such method as may be determined by the deputy commissioner with the approval of the Secretary. This section does not authorize the modification of settlements.

(Mar. 4, 1927, ch. 509, §22, 44 Stat. 1437; May 26, 1934, ch. 354, §5, 48 Stat. 807; June 25, 1938, ch. 685, §10, 52 Stat. 1167; Pub. L. 98-426, §§16, 27(a)(2), Sept. 28, 1984, 98 Stat. 1650, 1654.)

#### AMENDMENTS

1984—Pub. L. 98-426, §16, inserted “(including an employer or carrier which has been granted relief under section 908(f) of this title)” after “party in interest” and “(including a case under which payments are made pursuant to section 941(i) of this title)” after “review a compensation case” and inserted at end “This section does not authorize the modification of settlements.”

Pub. L. 98-426, §27(a)(2), substituted “Secretary” for “commission”. See Transfer of Functions note set out under section 902 of this title.

1938—Act June 25, 1938, permitted review of compensation case at any time prior to one year after rejection of claim and authorized award of compensation.

1934—Act May 26, 1934, permitted review based on a mistake in a determination of fact; substituted provision for review of compensation case at any time prior to one year after date of last payment of compensation, whether or not compensation order was issued, for original provision for review at any time during term of award and after compensation order in respect of such award had become final; authorized reinstatement of compensation; and inserted exception clause.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

### § 923. Procedure before deputy commissioner or Board

(a) In making an investigation or inquiry or conducting a hearing the deputy commissioner or Board shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter; but may make such investigation or inquiry or conduct such hearing in such manner as to best ascertain the rights of the parties. Declarations of a deceased employee concerning the injury in respect of which the investigation or inquiry is being made or the hearing conducted shall be received in evidence and shall, if corroborated by other evidence, be sufficient to establish the injury.

(b) Hearings before a deputy commissioner or Board shall be open to the public and shall be stenographically reported, and the deputy commissioners or Board, subject to the approval of the Secretary, are authorized to contract for the reporting of such hearings. The Secretary shall by regulation provide for the preparation of a record of the hearings and other proceedings before the deputy commissioners or Board.

(Mar. 4, 1927, ch. 509, §23, 44 Stat. 1437; Pub. L. 92-576, §15(e), Oct. 27, 1972, 86 Stat. 1262; Pub. L. 98-426, §27(a)(2), Sept. 28, 1984, 98 Stat. 1654.)

#### AMENDMENTS

1984—Subsec. (b). Pub. L. 98-426 substituted “Secretary” for “commission”. See Transfer of Functions note set out under section 902 of this title.

1972—Pub. L. 92-576 inserted references to the Board in subssecs. (a) and (b).

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

#### EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92-576, set out as a note under section 902 of this title.

### § 924. Witnesses

No person shall be required to attend as a witness in any proceeding before a deputy commissioner at a place outside of the State of his residence and more than one hundred miles from his place of residence, unless his lawful mileage and fee for one day's attendance shall be first paid or tendered to him; but the testimony of any witness may be taken by deposition or interrogatories according to the rules of practice of the Federal district court for the judicial district in which the case is pending (or of the United States District Court for the District of Columbia if the case is pending in the District).

(Mar. 4, 1927, ch. 509, §24, 44 Stat. 1437; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, §32(b), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107.)

#### CODIFICATION

As originally enacted, this section contained a reference to the Supreme Court of the District of Columbia. Act June 25, 1936, substituted “the district court of the United States for the District of Columbia” for “the Supreme Court of the District of Columbia”, and act June 25, 1948, as amended by act May 24, 1949, substituted “United States District Court for the District of Columbia” for “district court of the United States for the District of Columbia”.

#### FEDERAL RULES OF CIVIL PROCEDURE

Depositions and discovery, see rule 26 et seq. of Title 28, Appendix, Judiciary and Judicial Procedure.

### § 925. Witness fees

Witnesses summoned in a proceeding before a deputy commissioner or whose depositions are taken shall receive the same fees and mileage as witnesses in courts of the United States.

(Mar. 4, 1927, ch. 509, §25, 44 Stat. 1437.)

#### CROSS REFERENCES

Per diem and mileage generally, see section 1821 of Title 28, Judiciary and Judicial Procedure.

### § 926. Costs in proceedings brought without reasonable grounds

If the court having jurisdiction of proceedings in respect of any claim or compensation order determines that the proceedings in respect of such claim or order have been instituted or con-